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Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, submitted pursuant to Human Rights Council resolution 33/1.

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I. Introduction and summary of recent activities

A. Participation in consultations and conferences

1. Since she presented her previous report to the Human Rights Council (A/HRC/33/46), the Special Rapporteur on contemporary forms of slavery, including its causes and consequences has participated in a wide range of international conferences and initiatives relating to the contemporary forms of slavery. In September 2016, the she attended a meeting convened by the Prime Minister of the United Kingdom of Great Britain and Northern Ireland and attended by other heads of State, United Nations agencies and civil society experts in the margins of the seventy-first session of the General Assembly.

2. In December 2016, the Special Rapporteur participated in a panel discussion on child slavery with the United Nations High Commissioner for Human Rights and other stakeholders, convened by the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery. The Fund assists individuals, whose human rights have been severely violated as a result of contemporary forms of slavery. It provides vital direct humanitarian, legal and financial assistance to victims through grants awarded to non-governmental organizations (NGOs). Throughout the implementation of her mandate over the past year, the Special Rapporteur has worked in collaboration with the Fund. She thanks its members for their ongoing support to all elements of her work and encourages Member States to support their work.

3. In March 2017, the Special Rapporteur gave a presentation at the Security Council ministerial open debate on trafficking in persons in conflict situations, including forced labour, slavery and other similar practices. In her statement, she called for greater coordination and leadership on slavery and related phenomena and for States members of the Security Council to ratify and implement international standards.

4. In the past year, the Special Rapporteur has engaged with "SDG Alliance 8.7", a multi-stakeholder coalition committed to accelerating and intensifying actions to achieve target 8.7 of the Sustainable Development Goals. As such, she attended the high-level launch of the initiative in New York in September 2016 and a consultation on child labour and forced labour in Addis Ababa in June 2017.

B. Country and follow-up visits

5. Since her presentation to the Human Rights Council at its thirty-third session, the Special Rapporteur conducted a country visit to Paraguay from 17 to 24 July 2017. The purpose of the visit was to address the causes and consequences of contemporary forms of slavery in the country, identify good practices undertaken by the Government, investigate the challenges and develop recommendations for how efforts to eradicate slavery could be accelerated. A report summarizing the visit will be available as an addendum to the Special Rapporteur's report to the General Assembly at its seventy-third session.

6. In addition to the above-mentioned fact-finding visit, the Special Rapporteur conducted visits to Mauritania and the Niger in April and August 2017, respectively, in order to conduct workshops to assess the implementation of the mandate's previous recommendations.

II. Legal elements of the right to have access to justice and remedy

7. The term "contemporary forms of slavery" covers the practices prohibited by the Slavery Convention of 1926, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956 and the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29). Considering the practices covered by the mandate of the Special Rapporteur and the legal

definitions stipulated in those international instruments, the practices encompassed by the term "contemporary forms of slavery" cover traditional slavery; the institutions and practices similar to slavery, such as debt bondage, serfdom and forced marriage; and forced labour. The present report focuses on access to justice and remedy for victims of contemporary forms of slavery, particularly for persons subjected to practices in the context of labour exploitation that satisfy the legal definitions of slavery; debt bondage; and forced labour. That focus reflects the information submitted by different stakeholders and Member States in response to the questionnaire prepared by the Special Rapporteur on access to justice and remedy for victims of contemporary forms of slavery.

A. General characteristics of slavery, institutions and practices similar to slavery, servitude and forced labour

8. A hierarchy in international law exists among slavery and other forms of exploitation, with slavery being the most severe type of exploitation.[1] The element of control of the person or his/her labour is present in the various forms of exploitation to different degrees, and the most extreme form of control is manifested when it exhibits powers attached to ownership. This accounts for a distinction between slavery and other lesser exploitive practices, such as forced labour, servitude and the institutions and practices similar to slavery. However, such practices can also constitute "slavery" in law and can be prosecuted as such if they manifest any or all of the powers relating to the right of ownership or if the control exercised over the person subjected to the practices is equivalent to possession of the person.

1. Slavery, forced labour, institutions and practices similar to slavery and servitude

9. The Slavery Convention defines slavery in its article 1.1 as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised". That definition relates not only to the de jure status of slavery, but the de facto condition of slavery; it is not restricted to legal ownership — a status that has been abolished worldwide — but to a lived condition in which one individual exercises over another powers that are similar to or attach themselves to the right of ownership. A situation of de facto slavery implies that a person can exercise over another "any or all" of the powers attached to ownership in circumstances where control tantamount to possession is present; that type of control constitutes a prerequisite for any de facto exercise of the powers attaching to ownership.[2]

10. In furtherance of the elements contained in article 2.1 of its Forced Labour Convention, 1930 (No. 29), ILO has defined forced labour as work for which a person has not offered him or herself voluntarily (concept of "involuntariness") and which is performed under menace of any penalty (concept of "coercion") applied by an employer or a third party to the worker. The four "institutions and practices similar to slavery" defined in the 1956 Supplementary Convention, referred to collectively as "servile status", should be understood as conventional servitudes. They are: debt bondage; serfdom; forced marriage; and a category that has been subsequently known as "the sale of children". Furthermore, the notion of "servitude" has also been defined through the decisions of adjudicative organs related to human rights.[3]

2. Legal status of the prohibition of slavery

11. The prohibition of slavery has attained *jus cogens* status and constitutes an obligation *erga omnes*. The recognition of slavery as *jus cogens* entails the duty to prosecute or extradite, the non-applicability of statutes of limitation and universality of

[1] Jean Allain, *The Law and Slavery: Prohibiting Human Exploitation* (2015).

[2] Ibid. See also report of the Secretary-General on slavery, the slave trade and other forms of servitude (E/2357).

[3] See *Siliadin v. France*, European Court of Human Rights, Application 73316/01 (2005), paras. 123-124.

jurisdiction over the practice of slavery, regardless of where it is committed, by whom and against what category of victims.[4] The International Court of Justice has identified the protection from slavery as an example of an obligation *erga omnes*.[5] The practice of slavery has been universally accepted as a crime against humanity,[6] and the right to be free from enslavement is considered so fundamental that all States can bring before the Court cases where other States have violated that right.[7]

B. State responsibility and the standard of due diligence

12. The obligation of States to provide remedies and the right to have access to remedies can arise directly or indirectly under the rules of responsibility. The obligation arises directly when the State is active or complicit in subjecting an individual to slavery, servitude, practices and institutions similar to slavery and forced labour. On the contrary, the obligation arises indirectly when the State is not implicated in the harm but has failed to prevent it or respond appropriately (e.g. when the State has failed to exercise due diligence to investigate and prosecute perpetrators and to assist and protect victims).

13. The principle of State responsibility confirms that States have an obligation to act with due diligence, which entails the exercise of a measure of care in preventing and responding to acts by private persons or entities that interfere with established rights. Under the standard of due diligence, the State is not responsible for the acts of others, but for its failure to prevent, investigate, prosecute or provide redress for the harm caused. The general obligations of States extend beyond negative obligations of non-interference and include positive obligations, such as legislative reform, the provision of remedies and protection from non-State interference.

1. Obligation to ensure that subjecting a person to slavery, servitude, practices and institutions similar to slavery and forced labour is defined in law as a crime[8]

14. States have an obligation to adopt appropriate legislation penalizing slavery, servitude, practices and institutions similar to slavery and forced labour. this legislation must be sufficiently clear and detailed and provide a punishment commensurate to the crime. In its 2005 judgment in the *Siliadin v. France* case, concerning a woman who had been held in servitude as a domestic worker in France and for the first two years of her exploitation had been a child (aged under 18 years), the European Court of Human Rights observed that the legislation in France regarding servitude had been vague and the penalties imposed had been inappropriately lenient. Referring to the obligations of France as a State party to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery and to the Convention on the Rights of the Child the Court considered that

> Limiting compliance with article 4 of the [the Convention for the Protection of Human Rights and Fundamental Freedoms] only to direct action by the State authorities would be inconsistent with the international instruments specifically concerned with this issue and would amount to rendering it ineffective. ... States have positive obligations ... to adopt criminal-law provisions which penalize the practices referred to in Article 4 and to apply them in practice.[9]

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[4] See M. Cherif Bassiouni, "International Crimes: Jus Cogens and Obligations Erga Omnes", in *Law And Contemporary Problems*, Vol. 59, Iss. 4 (1996).

[5] See Barcelona Traction, Light and Power Co, Ltd. (*Belgium v. Spain*), 1971 I.C.J. 32. (Feb. 5).

[6] Article 7 (2) (c) of the Rome Statute of the International Criminal Court characterizes "enslavement" as a crime against humanity falling within the jurisdiction of the Court.

[7] See R.C. Redman, "The League of Nations and the Right to be Free from Enslavement: the First Human Right to be Recognized as Customary International Law", in *Chicago-Kent Law Review*, Vol. 70, Iss. 2, pp. 759-800 (1994).

[8] See annex for additional relevant jurisprudence at the regional level.

[9] See Council of Europe, European Court of Human Rights, *Siliadin v. France* (Application 73316/01), 26 July 2005, para. 89.

The Court concluded that "the criminal-law legislation in force at the material time did not afford the applicant, a minor, practical and effective protection against the actions of which she was a victim"[10] and that the State had violated its positive obligations under article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits slavery, servitude and forced labour.

2. Obligation to ensure that offences involving slavery, servitude, practices and institutions similar to slavery and forced labour are investigated and prosecuted with due diligence

15. The due diligence standard imposes a positive duty on States to ensure the effective enforcement of their criminal law through effective investigation and prosecution of perpetrators. The Economic Community of West African States (ECOWAS) Court of Justice, in its 2008 case *Hadijatou Mani Koraou v. The Republic of Niger*, concerning a woman who had been sold at age of 12 to a local tribal chief and placed in a servile status, referred to the duty of States to investigate and prosecute crime. The laws of the Niger prohibited slavery and servitude, but when State officials were informed of the exploitation of the woman they took no action to protect her. The Court observed that "the national judge, when having to rule on a matter relating to the status of persons (as in the case of the applicant) should as soon as the case raises facts relating to servitude, deal with the case relating to servitude and follow the stipulated procedure for punishing the crime".[11] The Court concluded that the applicant had been a victim of slavery and that the Niger was responsible for its administrative and judicial authorities' failure to act with regard to the practice.

16. In 2016, the Inter-American Court of Human Rights issued a judgment in the case of *Hacienda Brasil Verde Workers v. Brasil* concerning the situation of workers, primarily men of African descent, coming from the country's poorest states, who were subjected to slave labour in a privately owned estate located in the northern part of the country. The Court observed that the obligation to guarantee the right of freedom from slavery, recognized in article 6 of the American Convention on Human Rights, entails the duty of the State to prevent and investigate possible situations of slavery, servitude, trafficking in persons and forced labour.[12] The Court considered that:

> States have the obligation to: initiate ex officio and immediately an effective investigation that enables the identification, prosecution and sanction of those responsible when there exists a complaint or serious reason to believe that persons under their jurisdiction are subjected to the practices stipulated in article 6.1 and 6.2 of the Convention (on slavery, involuntary servitude, traffic in women and forced labour); … conduct inspections or other measures to detect such practices; and adopt measures to protect and assist victims.

The Court observed that, under the circumstances of the case, there was a special obligation to act with due diligence and that that obligation had not been fulfilled by the State.[13]

3. Obligation to provide a remedy to persons subjected to contemporary forms of slavery

17. The duty of a State to provide domestic legal remedy to victims of human rights violations for the harms suffered in their territory is well established in international and regional human rights instruments (see annex). The obligation of States to provide a remedy has two components: (a) justice for victims through procedural mechanisms

[10] Ibid. paras. 148-149.

[11] ECOWAS Court of Justice, Judgment No. ECW/CCJ/JUD/06/08 of 27 October 2008, *Hadijatou Mani Koraou v. The Republic of Niger*, para. 82 (unofficial translation).

[12] *Hacienda Brasil Verde Workers v. Brasil*, American Convention on Human Rights, October 2016, para. 319 (unofficial translation).

[13] Ibid. para. 368.

(procedural remedies); resulting in (b) final positive relief (substantive reparations).[14] The nature of the procedural remedies (judicial, administrative or other) should be in accordance with the substantive rights violated and the effectiveness of the remedy in granting appropriate relief for such violations. In the case of grave abuses, such as slavery, practices and institutions similar to slavery and forced labour, remedies need to be judicial. However, States can also provide other non-judicial remedies to complement reparation procedures. A right of access to effective remedies entails the availability of such remedies under criminal or civil law, and States should ensure that victims are provided with information and assistance that will enable them to secure the reparations to which they are entitled.

18. The reparations for victims of slavery, practices and institutions similar to slavery, servitude and forced labour should be accessible, affordable, timely, full and effective, while respecting the principles of appropriateness and proportionality. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law advise that reparations for victims should include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

III. Challenges and obstacles encountered by persons subjected to contemporary forms of slavery to access justice

A. Social and cultural barriers

1. Discrimination and social structures

19. Persons subjected to contemporary forms of slavery often belong to populations that are likely to be discriminated against, including women, children, indigenous people, people of "low" caste status and migrant workers. The societal discrimination that minority groups suffer denies their right to equal access to justice: often, State officials, including the police, prosecutors and the judiciary, are inherently prejudiced against people belonging to such groups. As a result, they experience discrimination at every step in the administration of justice for their rights violations. This situation is exacerbated when the groups are not represented within law enforcement authorities. Furthermore, the wide discrimination that people belonging to such groups suffer results in them having a sense of inferiority, which often poses challenges in their deciding to claim their rights or report the abuse they have suffered.

People of "low" caste status, indigenous people and other minority groups

20. In South Asia, debt bondage and forced labour is reported to be widespread in countries such as Bangladesh India, Nepal and Pakistan.[15] Those who are trapped in debt bondage in South Asia are predominantly Dalits, of "low" caste status, indigenous people or other minority groups. In some countries, a hierarchy of work has been created as a result of community divisions under which labourers are put at the lower level, particularly those of "low" caste status or those belonging to ethnic and religious minorities. An individual's access to justice, jobs and other rights and privileges are often conditioned by this social hierarchy. This results in discrimination, domination, inequality and disparity, primarily through a lack of cultural and social power and access to resources for people who belong to minority groups. Furthermore, those who opt to defy traditional exploitative, discriminatory and humiliating roles, often face social boycotts that further restrict any opportunity to overcome discrimination-related poverty and dependency on employers or landlords.

[14] See REDRESS, "Implementing Victim's Rights: A Handbook on the Basic Principles and Guidelines on the Right to a Remedy and Reparation" (2006). Available from www.redress.org/downloads/publications/Reparation%20Principles.pdf.

[15] Submissions to the Special Rapporteur from the organizations READ, DSN-UK and the Nepal National Dalit Social Welfare Organization. See also A/HRC/33/46.

21. In some African countries, even though slavery is a crime, the practice of slavery persists and is entrenched in social structures and cultural beliefs, and people subjected to that practice are often unaware that their situation is illegal or unjust. People subjected to slavery are often at the bottom of a social hierarchy based along ethnic and racial lines and suffer widespread discrimination and social exclusion; they are in some instances treated by perpetrators as commodities that can be sold, loaned or offered as a marriage gift, and receive no payment for their work. In Mauritania, the Haratine (also known as black Moors) constitute the largest ethnic group. They suffer discrimination, marginalization in the political and economic sphere and are particularly affected by slavery.[16] In the Niger, slavery has been reported to exists in the Tuareg, Fulani (Peul), Toubou and Arab communities, which are hierarchical societies dominated by powerful traditional chiefs.[17]

22. In Latin America, in countries such as Guatemala, Paraguay and the Plurinational State of Bolivia, poverty and social exclusion affecting indigenous people in isolated areas often create conditions that enable the continuation of practices such as debt bondage and forced labour. Obstacles encountered by indigenous people in attempting to gain access to the justice system are generally a function of the social exclusion and ethnic discrimination that they have historically suffered,[18] coupled in some cases by a lack of recognition of ethnic diversity by elites and the authorities.[19] A barrier often encountered by indigenous people to access justice is the lack of sensitivity and in some cases lack of consideration by the justice system of their practices and customs (e.g. the prohibition of the use of indigenous language in judicial proceedings particularly in cases where they lack knowledge of the official language).

Cross-border migrant workers

23. The Arab states, North America and Northern, Southern and Western Europe, which typically include high-income countries, are major destination countries for migrant workers.[20] The majority of people trafficked for labour exploitation to those regions are migrant workers and are involved in a variety of jobs, including domestic work, agricultural work and construction. The irregular employment or migration status of some migrant workers make them particularly vulnerable to exploitation and creates barriers to them seeking legal redress. This has a gender dimension since large numbers of migrants in unskilled and unregulated sectors are women.[21] A rise in anti-immigrant sentiment in many countries, stricter migration polices and the prosecution for migration-related criminal offences constitute challenges for migrant workers to gain access to justice. Often they are treated as perpetrators of an immigration crime, risking imprisonment or deportation, rather than as victims entitled to protection, assistance and redress. Furthermore, victims of trafficking for labour exploitation are often detained, prosecuted or punished for crimes they are forced to commit as a result of being trafficked.[22]

24. Regular migrants who are given work permits can also be subjected to labour exploitation, particularly when their work permit ties them to a single employer. In some countries of the Cooperation Council for the Arab States of the Gulf, and Arab states such as Bahrain, Lebanon, Saudi Arabia, the United Arab Emirates, migrant workers are

[16] See A/HRC/15/20/Add.2, paras. 5 and 12.

[17] See A/HRC/30/35/Add.1, paras. 34-36.

[18] See Inter-American Commission on Human Rights, *Captive Communities: Situation of the Guarani Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco* (2009). Available from www.oas.org/en/iachr/indigenous/docs/pdf/CAPTIVECOMMUNITIES.pdf.

[19] See Julio Faundez, "Access to justice and indigenous communities in Latiin America", in *Marginalized communities and access to justice* (Yash Ghai and Jill Cottrell, eds.) Chapter 5 (2009).

[20] See ILO, *Global Estimates on Migrant Workers: Results and Methodology, Special focus on migrant domestic workers* (2015). Available from www.ilo.ch/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_436343.pdf.

[21] See Organization for Security and Cooperation in Europe, *An Agenda for Prevention: Trafficking for Labour Exploitation* (Vienna, 2011), Chap. 2.

[22] As a matter of international law, victims of human trafficking should not be detained, prosecuted or punished for crimes they are forced to commit as a result of being trafficked (see European Union Trafficking Directive (2011/36), article 8).

particularly vulnerable to exploitation and a primary barrier to ensuring them access to justice is the *kafala* system of labour sponsorship, by which migrant workers are required to obtain sponsorship from their employers in order to live and work in the country. Domestic migrant workers are among the most vulnerable and can face specific barriers to gaining access to justice and remedy, including severe restrictions on their freedom of movement, such as passport confiscation and an inability to leave their work premises, and a dependence on their employers for retaining regular migration status.

2. Self-identification and lack of trust in the justice system

25. The relationship between potential victims and offenders can sometimes be contradictory. Some persons subjected to contemporary forms of slavery would often not see themselves as victims of exploitation and abuse. Migrant workers, for example, who had some knowledge of the situation that they were entering, may not want to be labelled as victims, but be provided with another job and better working conditions. Also, if the perpetrator is a family member, they may not be willing to be labelled as victims or to press charges, because of emotional ties. Furthermore, victims who belong to a group of people that has suffered discrimination and exclusion over generations and live in societies where slavery crimes are embedded in traditional beliefs and customs, would often not identify themselves as victims due to the normalization of such practices.

26. Persons subjected to contemporary forms of slavery often do not have confidence in law enforcement and judicial bodies. They often consider them to be corrupt or fear they will be discriminated against or revictimized. Furthermore, the fact that legal processes tend to be prolonged and complex exacerbates their distrust of the legal system. Systemic discrimination against people of "low" caste, indigenous people, migrants and other minorities in wider society and corruption among law enforcement, coupled with victims' concerns over their particular situation (e.g. irregular status), feed into a general distrust of the police among victims and a perception that law enforcement agencies and courts exist to protect the wealthy and powerful.[23]

B. Practical barriers

27. Contemporary forms of slavery often take place in areas that are isolated and not easily accessible. This poses particular challenges to the identification of victims by the authorities as well as practical barriers to victims for accessing justice. The informal employment of workers in a range of economic activities and the fact that exploitation often occurs in hidden, inaccessible workplaces pose challenges to the identification of victims and their access to justice; informal employment is widespread in agriculture, small and medium enterprises, domestic work, among other services.[24] Furthermore, physical accessibility to justice institutions is a barrier encountered by victims, and the centralization of legal and administrative systems prevents victims from rural or remote areas from gaining access to such mechanisms. Thus, in many cases, victims exploited in places far from the main urban areas have little or no possibilities to gain access to specialized support services. Child victims in particular face enormous barriers in gaining accessing to justice.

28. Persons subjected to contemporary forms of slavery belong to groups in society that are marginalized and economically disadvantaged; they are exploited for their labour and paid low wages, not paid for their work, or their salaries are withheld; they are economically dependent on those who exploit them and this situation poses financial constraints in considering or attempting to gain access to justice. Pursuing criminal justice and participating in the procedure often involves significant expenses that victims cannot afford, including court and other filing fees, legal fees, expenses for gathering documents,

[23] Submissions to the Special Rapporteur from the organizations ASI and the Global Alliance Against Traffic in Women.

[24] See ILO, *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (Geneva, 2012). Available from www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182096.pdf.

traveling to courtrooms, food and accommodation while the case is ongoing, and indirect costs such as loss of earnings.

C. Institutional and procedural barriers

1. Legislative and policy barriers

Absence of legal protection

29. The international legal framework prohibiting contemporary forms of slavery imposes on States the obligation to adopt stand-alone domestic legislation criminalizing such practices and to ensure that the penalties established are adequate and commensurate with their gravity, beyond any provisions they may have in place criminalizing trafficking in persons. However, to date, a significant number of States parties to the instruments prohibiting contemporary forms of slavery have not yet put in place provisions criminalizing forced labour, servitude and/or slavery as stand-alone offences at the domestic level.[25] Furthermore, the legal definitions developed in some States are often inadequate to enable enforcement officials to detect contemporary patterns of exploitation. The absence of clear definitions or vagueness in the law constitute major impediments for law enforcement officials to detect cases of contemporary forms of slavery and gather appropriate evidence to prove an offence has occurred in order to identify and protect victims.

30. In order to guarantee to victims of contemporary forms of slavery adequate and effective remedies, legislation prohibiting such practices should make available as remedies not only criminal proceedings but also civil compensation.[26] The burden of proof to bring criminal charges is set at a high threshold, which makes prosecution in some cases difficult. Often, prosecution is not possible owing to a lack of evidence; therefore, that avenue is only available in those few cases where the perpetrator has been convicted. Where there is no specific civil remedy stipulated by law for contemporary forms of slavery, the only option open to victims is existing civil actions, which are often inadequate to address the nature of such forms of exploitation.

31. Finally, the non-regulation of certain occupations or their exclusion from national labour laws make workers, particularly women, vulnerable to contemporary forms of slavery and constitutes an obstacle to their equal access to justice. In its general recommendation No. 26 (2008) on women migrant workers, the Committee on the Elimination of Discrimination Against Women, considering that domestic work is one of the occupations in which migrant women dominate, stated that in countries of destination, such occupations may be excluded from legal definitions of work, thereby depriving women of a variety of legal protections.

Legislation and policies that limit victims' access to justice

32. In some countries, legislation and policies exist that facilitate contemporary forms of slavery and create barriers for victims to access justice and remedy. The *kafala* system, which is in place in a number of countries in the Middle East, creates a power imbalance in the employment relationship and leaves workers with little bargaining power and vulnerable to exploitation. Migrant workers who decide to flee from an abusive employer are classified as irregular migrants and may be subjected to arrest, detention and deportation or in some cases falsely accused by their employers of having committed a crime. Furthermore, the criminalization of illegal entry to a country, illegal working or overstaying the period of a visa, denies protection to victims of contemporary forms of

[25] Submission to the Special Rapporteur by Jean Allain.

[26] See working paper of the organization FLEX entitled "Access to Compensation for Victims of Human Trafficking" (July 2016). Available from www.labourexploitation.org/sites/default/files/publications/DWP-Compensation-F.pdf.

slavery who migrate irregularly or become irregular once in the destination country.[27] That situation makes victims fear the authorities, increases control of perpetrators over them and makes it unlikely that they will complain to the authorities.

2. Lack of identification of victims

33. The non-identification of victims of contemporary forms of slavery by law enforcement agencies, labour inspectors, border management forces and other relevant competent authorities is a significant obstacle for victims in gaining accessing to justice, since identification constitutes the first step that leads to protection and to initiating the process whereby access to justice and remedy can be obtained. The reasons for the failure to identify victims include: a lack of specialized knowledge on the part of the authorities in identifying, or insufficient training about, contemporary forms of slavery, or a lack of capacity to distinguish between such practices and those that constitute less serious forms of abuse; insufficient financial resources allocated to the identification of victims; a lack of awareness among authorities and the public; and in some countries a systematic refusal by the authorities to identify, acknowledge or respond to cases of contemporary forms of slavery. The focus on the immigration status in cases of undocumented migrants subjected to contemporary forms of slavery can also lead to the misidentification of victims by the authorities.[28] Furthermore, the fact that persons subjected to contemporary forms of slavery often do not identify themselves as victims poses challenges to their identification. There are particular difficulties in identifying children who are enslaved or subjected to forced labour or servitudes, which makes it more important for law enforcement authorities to be adequately trained.

3. Lack of investigation, prosecution and punishment of perpetrators

34. Many of the countries where contemporary forms of slavery occur have limited capacity to investigate and prosecute such crimes.[29] The enforcement of laws criminalizing contemporary forms of slavery often remains ineffective owing to institutional weaknesses that are manifested in the failure of the police, prosecutors and the judiciary to respond adequately to reported cases of exploitation, from identifying and investigating to prosecuting and punishing perpetrators. Those weaknesses can be the result of a lack of training and capacity of the authorities responsible for the enforcement of legislation; a lack of political will on the part of the authorities to make victims protection a priority; susceptibility to corruption; and discrimination within the justice system against minorities. During the initial phase of the justice chain,[30] access to justice can be obstructed by weaknesses in the actions of the police, prosecutors and other authorities encountered by victims of contemporary forms of slavery. Those weaknesses are reflected in poor investigation and gathering of evidence. At the level of the administrative authorities and the police, there are often limited efforts to seek out victims, investigate cases that are brought to their attention or refer cases to prosecutors. Furthermore, at the prosecutorial level, there is often a failure to conduct criminal investigations with due diligence, and

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[27] See Global Alliance Against Traffic in Women, "Enabling Access to Justice: A CSO Perspective on the Challenges of Realising the Rights of South Asian Migrants in the Middle East" (Bangkok, 2017). Available from www.gaatw.org/publications/GAATW_Enabling%20Access%20to%20Justice_2017.pdf.

[28] See La Strada International and Anti-Slavery International, "European Action for Compensation for Trafficked Persons: Findings and Results of the European Action for Compensation for Trafficked Persons" (2012). Available from http://lastradainternational.org/lsidocs/Findings%20and%20results%20of%20Comp.Act.pdf.

[29] See D. Tolbert and L. A. Smith, "Complementarity and the Investigation and Prosecution of Slavery Crimes" in *Journal of International Criminal Justice*, Vol. 14, Iss. 2 (2016).

[30] The justice chain is the series of steps that a person has to make to gain access to justice through the formal justice system or to claim their rights. See United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), *Progress of the World's Women 2011-2012: in Pursuit of Justice* (2011), available from www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2011/progressoftheworldswomen-2011-en.pdf?vs=2835.

complaints concerning contemporary forms of slavery can be reclassified under other "lesser" and unrelated charges or informal settlements arranged. In some instances, victims are pressured from different actors, including the police and judicial officials, in order to reach an agreement to end the prosecution.[31]

4. Lack of immediate and long-term assistance

35. The absence of effective programmes and policies to provide socioeconomic support to victims of contemporary forms of slavery emerging from a situation of slavery make them vulnerable to relapsing into exploitation owing to the destitution that victims often face. Persons subjected to contemporary forms of slavery need to be able to have access to immediate and long-term assistance that enables them to restart their lives as independently as possible. Delays in the provision of assistance, complex procedures to gain access to those services along with insufficient government funding to the assistance and recovery process and the contingency of assistance to victims on cooperation with the justice system, are some of the barriers that prevent victims from accessing immediate and long-term assistance.[32] Immediately after escaping from the situation of exploitation, the victim must be provided with basic assistance, such as: housing in safe houses or shelters until the cases are closed; medical support, including basic health check-ups; mental health support; psychosocial counselling; financial aid; travel and maintenance expenses for victims and witnesses during investigation and trial; and travel and daily allowances. Once the short-term needs of the victim are met, other services aimed at ensuring long-term recovery must be provided, such as life-skills training; assistance with job seeking; reintegration assistance; vocational training; language classes; education; and social activities.

5. Lack of information and legal assistance

36. Persons subjected to contemporary forms of slavery are often not aware of the possibilities for gaining access to justice and remedy and therefore do not report the exploitation they have suffered to the authorities. However, even when victims have been officially identified, they are sometimes not provided with clear and consistent information about their rights, relevant laws and regulations, available complaint mechanisms and legal remedies; this situation is exacerbated for victims who have few language skills or are illiterate. Furthermore, victims can often be deterred from participating in legal proceedings because simple, accessible and timely legal advice is not available to them; advice is not always freely available to victims, particularly prior to engagement with authorities. In some instances, professionals who advice or assist victims of contemporary forms of slavery are not specialized in handling cases concerning such forms of exploitation; awareness and understanding of available procedures among professionals regarding available procedures has appeared to fall short. Despite legislation in place in some countries that entitles victims to legal aid, they are often unable to gain access to those services owing to a limited number of legal aid providers; persistent delays by the relevant authorities in considering requests from victims to have access to the services; and lack of resources allocated to ensure the provision of legal services. Some jurisdictions permit registered anti-slavery NGOs to bring claims on behalf of victims (such as in the anti-slavery laws in Mauritania and the Niger).

6. Weak victim and witness protection

37. The absence of any legal and administrative mechanisms to protect victims from the time their complaints are registered by the police to the conclusion of the legal proceedings denies them the right to security of life and can be a powerful incentive for them not to claim their rights to have access to justice and remedy.[33] Persons subjected to slavery and

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[31] National Dalit Movement for Justice, *Justice Under Trial, Caste Discrimination in Access to Justice before Special Courts* (New Delhi, 2014). Available from www.annihilatecaste.in/uploads/downloads/Justice%20Under%20Trial.pdf.

[32] Submissions to the Special Rapporteur from the organizations International Dalit Solidarity Network and the Freedom Fund.

[33] See *Justice Under Trial* (footnote 31 above).

related forms of exploitation, witnesses and members of the victim's family often face threats and harassment from the perpetrator, the perpetrator's community and in some cases the authorities. Such practices have been shown to have a negative influence on the outcome of trials as victims and witnesses can be intimidated into not cooperating with law enforcement authorities. In some cases, despite credible fears of reprisals, the law enforcement agencies have failed to take adequate measures to ensure victim and witness protection, despite being requested to do so by the courts.[34] The fear of reprisals from perpetrators and the sense of insecurity is often exacerbated in cases were the victims continue to live in the same community as the alleged perpetrators.

D. Challenges encountered by persons subjected to contemporary forms of slavery in gaining access to justice and remedy for violations taking place in international supply chains

38. The globalized economy has created opportunities for transnational corporations across different sectors to source goods and services at a low cost from complex chains of suppliers, and has allowed those corporations to extend their operations across national borders, including to developing countries.[35] Transnational corporations with supply chains that are long and complex are more likely to face challenges related to contemporary forms of slavery. In particular, lower levels of supply chains are often at risk of products or raw materials being sourced from home-based or small workshops in the informal economy and made under conditions that include slavery, forced labour or debt bondage.[36]

39. Access to justice and remedy for victims in that context is often constrained by legal rules limiting the liability of transnational corporations for human rights violations not directly arising from their business operations. Furthermore, the absence of laws with extraterritorial effect often denies victims of contemporary forms of slavery access to justice in cases in which the exploitation of individuals occurs in a territory different from the one where the corporation is domiciled. Often, victims are left with the only option of seeking redress in the territory where the violation has occurred and denied an effective remedy;[37] the challenges that some developing countries face in regulating companies (e.g. due to governance issues, weak or non-existent legal frameworks or lack of sufficient resources) have meant that people vulnerable to exploitation are more likely to experience corporate human rights abuses and are less able to have access to justice and remedy.

40. The measures undertaken by corporations to handle complaints of violations of workers' rights within their supply chains, such as operational-level grievance mechanisms, can play a role in facilitating access to justice and remedy and feed into the fulfilment of businesses' due diligence obligations, through the identification of adverse human rights impacts. However, several aspects of those mechanisms raise questions regarding their adequacy, which include: the unequal power dynamics between victims of contemporary forms of slavery and companies, the enforcement of the outcomes of such mechanisms and the remedies awarded not being proportionate to the harm suffered and the lack of criminal sanctions.

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[34] Office of the United Nations High Commissioner for Human Rights, *Opening the Door to Equality. Access to Justice for Dalits in Nepal* (Nepal, 2011), available from www.opendemocracy.net/beyondslavery/gscpd/urmila-bhoola/urmila-bhoola-yes. See also The Freedom Fund, Putting Justice First: Legal Strategies to Combat Human Trafficking in India, available from www.trust.org/contentAsset/raw-data/ceedfd4f-0573-4caa-85ce-d5c222570078/file.

[35] See Urmila Bhoola, "Soft law not enough to prevent slavery and exploitation" (Open Democracy, 13 September 2016). Available from www.opendemocracy.net/beyondslavery/gscp.../urmila-bhoola/urmila-bhoola-yes.

[36] See A/HRC/30/35, para. 20.

[37] Amnesty International, Injustice Incorporated, *Corporate Abuses and the Human Right to Remedy* (London, 2014). Available from www.amnesty.org/en/documents/POL30/001/2014/en/.

IV. Measures undertaken at the national level aimed at ensuring access to justice and remedy to persons subjected to contemporary forms of slavery

41. The examples of measures undertaken at the national level presented in the present section were provided by Member States, NGOs and other stakeholders in their responses to the questionnaire on access to justice and remedy prepared by the Special Rapporteur. Furthermore, reference is made to examples of measures that have been referenced by the Special Rapporteur in previous thematic and country visit reports.

National legislation, policies and programmes[*]

42. In Mauritania, Law No. 031/2015 stipulates in its article 2 that slavery constitutes a crime against humanity and it is imprescriptible. Article 7 imposes a punishment of 10 to 20 years' imprisonment for subjecting a person to slavery. Articles 22 and 23 grant *locus standi* to associations that defend human rights. Article 24 provides that victims of slavery and slavery-like practices benefit from legal assistance and are exempted from all costs and legal fees related to the proceedings. Decree No. 2016.002 established special tribunals against slavery, which are currently set up in Nouakchott, Nema and Nouadhibou and are officially operational. Furthermore, a public institution has been created to identify, propose and implement programmes to eradicate poverty and the consequences of slavery.

43. In the Niger, the Criminal Code (Act No. 61-027 of 15 July 1961) in its article 270.1 defines slavery. Article 270.2 imposes 10 to 30 years of imprisonment for slavery and a fine of between 1 million and 5 million CFA francs. Article 270.5 grants *locus standi* to any association duly registered at least one year before the occurrence of the acts concerned and mandated by its statutes to fight against slavery or similar practices.

44. In India, the 1976 Bonded Labour System (Abolition) Act and the 1976 Bonded Labour (Abolition) Rules outlawed debt bondage and were intended to free all bonded labourers, cancel their debts, establish economic rehabilitation measures and punish (through fines and imprisonment) those who employ bonded labourers. They imposed a penalty on perpetrators of up to 3 years' imprisonment and a fine of up to 2,000 rupees. The recently adopted 2016 Central Sector Scheme for Rehabilitation of Bonded Labourers increased the amount of rehabilitation paid to released bonded labourers. The Legal Services Authorities Act 1987 established legal services authorities to provide free and competent legal services to the weaker sections of society.

45. In Nepal, the Bonded Labour (Prohibition) Act, 2058 (2002) abolished the practice of bonded labour in the country and provides for penalties and fines for perpetrators. The 2002 Act requires the establishment of freed bonded labourer rehabilitation and monitoring committees in a number of districts. In Pakistan, the Bonded Labour System (Abolition) Act 1992 abolished bonded labour throughout the country and provides for 2 to 5 years' imprisonment for perpetrators and/or the impositions of a fine of 50,000 rupees. The law mandates provincial governments to set up district vigilance committees for the implementation of the law and rehabilitation of bonded labourers.

46. In Lebanon, article 586-2 of the Criminal Code criminalized slavery, with penalties ranging from 5 to 15 years' imprisonment and a fee of 100 to 500 times the minimum wage. Article 586 (8) of the Code of Criminal Procedure provides that the judge may grant a foreign victim the right to reside in Lebanon until the end of the proceedings if his/her residence in the country is illegal. In Saudi Arabia, the 1992 Basic Law of Governance provides in its article 47 that the right to litigation shall be guaranteed equally to citizens and residents and that the law shall set forth the required procedures to ensure that right. The Labour Law (issued by Royal Decree No. M/51 and amended by Royal Decree No. M/46) penalizes the withholding of wages, the confiscation of passports, excessive work hours and the employment of a worker without a written contract. In Qatar, Law No. 21 of

[*] Submissions from Argentina, Australia, Lebanon Mauritania, and Saudi Arabia and the organizations Americans for Democracy and Human Rights in Bahrain, ASI and FLEX.

2015 regulating the entry, exit and residency of expatriates is aimed at replacing the *kafala* system with a contract-based system.

67. In Argentina, the crime of servitude or other similar conditions is stipulated in article 140 of the Criminal Code and punishable by 3 to 15 years of prison. Moreover, the National Directorate for the Promotion and Strengthening of Access to Justice was created by Decree No. 1755/08 to conduct and promote activities related to legal and social programmes and communitarian support. In Brazil, article 149 of the Penal Code punishes the offence of "reducing someone to conditions analogous to slavery" with 2 to 8 years' imprisonment and a monetary fine.

68. In the United Kingdom, the Modern Slavery Act 2015 criminalizes (under the concept of "modern slavery") slavery, servitude and forced or compulsory labour. Penalties include life imprisonment for conviction on indictment, or imprisonment for a term not exceeding 12 months or a fine or both for summary conviction. Section 8 provides that criminal courts have the ability to make reparation orders in cases where a perpetrator has been convicted of slavery, servitude or forced labour. Section 47 amended the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and entitles victims to legal aid for applications for leave or remain in the United Kingdom, compensation claims under employment law and claims for damages.

69. In the Netherlands, the 2011 Act on strengthening the position of victims of crime allows victims of violent crimes and sexual offences, including victims of trafficking for purposes of forced labour, to seek an advance payment from the State if the offender was convicted and ordered to pay damages to the victim as part of a criminal sentence, and he/she fails to pay those damages within a period of eight months after the sentence has become final.

70. In Australia, the Criminal Code Act 1995 criminalizes slavery servitude and forced labour. Slavery is punishable by up to 25 years' imprisonment (Division 270). The Fair Work Ombudsman is responsible for maintaining mechanisms that provide trafficked people with the opportunity to pursue civil damages, including for unpaid wages and entitlements.

Measures undertaken in the context of supply chains

71. In France, Law. No. 2017-399 of 2017 on the duty of care of parent companies and ordering companies establishes the obligation for parent and subcontracting companies to be vigilant. The law imposes on large French companies the duty of publishing annual public vigilance plans linked to their own activities, those of companies under their control and those suppliers and subcontractors with whom they have established commercial relationships. The breach of the duty of care may result in liability for the company.

72. In the United States of America, the Trade Facilitation and Enforcement Act of 2015 prohibits the importation of goods made with forced labour (Sect. 910). The California Transparency Act of 2010 requires companies headquartered in California or doing business in the state who have worldwide annual revenues exceeding $100 million to disclose information regarding their efforts to eradicate slavery and human trafficking in their supply chains. The Trafficking Victims Protection Reauthorization Act of 2008 created an offence of knowingly benefiting from forced labour and imposes the penalty of a fine, imprisonment of up to 20 years, or both (Sect. 1589). Furthermore, the Act establishes extraterritorial jurisdiction over trafficking in persons, forced labour, slavery and involuntary servitude (Sect. 223).

73. In the United Kingdom, the 2015 Modern Slavery Act contains a provision on transparency in supply chains, requiring all United Kingdom businesses with global turnover in excess of 36 million pounds and trading in the United Kingdom to publish an annual modern slavery statement disclosing the measures taken to identify, address and prevent modern slavery in their supply chains.

V. Components of a comprehensive human rights-based approach to ensure that persons subjected to contemporary forms of slavery have access to justice and remedy

54. Ensuring effective access to justice and remedy for victims of contemporary forms of slavery is rooted in the full and effective application of the rule of law. A strong rule of law relies on effective and equitable delivery of public services, such as criminal, civil and administrative justice, legal aid and assistance and law-making, for all individuals within a jurisdiction, without discrimination. States should take all steps necessary to provide services that ensure the rule of law in a fair, effective, non-discriminatory and accountable manner, and that such services are available and accessible nationwide.

55. The adoption of legislation that criminalizes slavery, practices and institutions similar to slavery and forced labour in order to give effect to the rights of victims as established in international law is essential as a first step to ensuring the right of victims to access to justice. These laws must be fully enforced, along with other relevant laws such as those on minimum wage and non-discrimination by labour inspectors, the police, courts and other judicial actors with sufficient capacity to provide efficient and effective administration of the law. Enforcement authorities must be trained on contemporary forms of slavery in order to secure justice and prevent the inadequate collection of evidence, the imposition of lenient sentences or the prosecution of perpetrators under laws different than those prohibiting contemporary forms of slavery. In situations where legislation criminalizing contemporary forms of slavery is not implemented owing to societal discrimination against minority groups, it is essential that States acknowledge the existence of discrimination and its link with the prevalence of those practices and introduce adequate measures to ensure victims' access to justice and remedies. This entails the obligation to ensure that law enforcement officers are sensitized to the situation and rights of minority groups and that minorities are represented at all levels of government and the police force, as well as within the judiciary.

56. States have a duty to ensure that statutory agencies with a mandate to identify victims have knowledge and adequate training on contemporary forms of slavery and that the necessary resources are allocated in order to ensure that the rights of victims are protected. States should develop and disseminate operational guidelines on the different practices with indicators that help officials identify whether a particular situation could constitute the crime of slavery. Those indicators should: (a) guide them to identify possible situations of exploitation; (b) be country-specific by taking into consideration the regions and economic sectors in which these practices are prevalent; (c) be based on national legislation; and (d) allow them to distinguish between contemporary forms of slavery and other lesser forms of exploitation. Periodic training on the identification of victims should be provided to law enforcement officers, border guards, immigration officials, prosecutors, judges, labour inspectors, diplomatic and consular staff, social welfare officers and child protection officers.

57. After being identified, victims of contemporary forms of slavery must be provided with adequate immediate assistance that should not be conditional on their cooperation with the authorities and include accommodation, medical care and psychological assistance and material assistance. Furthermore, victims should also receive long-term assistance in order to help them continue to recover and rebuild their lives, including measures to facilitate their reintegration into society and gain access to sustainable livelihoods. Monitoring of policies and programmes for short-term and long-term assistance should be conducted in order to ensure they are effective and prevent victims from returning to situations of exploitation. Support to victims should include providing information and assistance to enable them to gain access to their legal rights in a language and manner that they can understand. Legal assistance should be provided free of charge by lawyers trained in working with victims of contemporary forms of slavery and at the earliest opportunity.

58. Persons subjected to contemporary forms of slavery must have access to a competent and independent authority in order to be protected and assisted appropriately and to obtain adequate reparations. Furthermore, States have a duty to ensure that competent

and independent authorities respond effectively to situations of contemporary forms of slavery and that perpetrators are investigated and prosecuted, and receive and serve sentences that are commensurate with the crime. Avenues for victims obtaining remedy and reparation should not be costly, complex or restrictive, and should offer victims of contemporary slavery redress for the damage they have suffered as a result of being subjected to such practices.

VI. Conclusions and recommendations

A. Conclusions

59. **States have an obligation to respect, promote and fulfil the right to have access to justice by making available a system of effective remedies to persons subject to their jurisdiction. That entails the obligation of States to establish or strengthen where necessary judicial and administrative mechanisms to enable victims to obtain redress through legal procedures that are expeditious, fair, inexpensive and accessible. Reparations for victims should be timely, full and effective while respecting the principles of appropriateness and proportionality and must include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. States have a legal duty to prevent contemporary forms of slavery, investigate with special diligence, and to identify and prosecute those responsible and impose appropriate punishment.**

60. **Access to justice is essential for eradicating contemporary forms of slavery and protecting the human rights of victims. However, victims often encounter within justice systems a number of challenges and obstacles of a social, legal, institutional, procedural or practical nature that affect their capacity to gain access to justice and limit the remedies available to them. In some countries where contemporary forms of slavery exist, implementation of legislation that prohibits and punishes those practices remains poor owing to weak rule of law, corruption, discrimination and social exclusion and lack of capacity among law enforcement officials to investigate and prosecute perpetrators. A comprehensive victim-centred and human rights-based approach to ensure that persons subjected to contemporary forms of slavery have access to justice and remedy must have at its centre the compliance of States with their obligations under international law as well as full restitution of the rights of victims. Recommendations on the implementation of such an approach are detailed below.**

B. Recommendations to States Members of the United Nations

61. **With respect to social and cultural barriers, the Special Rapporteur recommends that States:**

(a) **Take all steps necessary to tackle the root causes and manifestations of discrimination against minority groups that are vulnerable to contemporary forms of slavery, including women, children, indigenous people, people of "low" caste status and migrant workers;**

(b) **Ensure that minority groups are provided with decent work opportunities and full and productive employment, adequate social services and free and compulsory primary education;**

(c) **Implement effective state programmes and policies to provide socioeconomic support to victims emerging from slavery;**

(d) **Recognize the existence of discrimination and its direct link to the prevalence of contemporary forms of slavery and introduce appropriate measures to ensure that people belonging to minority groups have equal access to justice;**

(c) **Adopt national anti-discrimination legislation and take the necessary measures to ensure that institutional discrimination and societal prejudice against minority groups is eradicated in a proactive manner; in addition, implement human rights-based training on the prevention and elimination of discrimination across State institutions;**

(f) **Ensure that members of minority groups are represented within law enforcement authorities;**

(g) **Ensure that law enforcement officials are aware of their responsibility to undertake outreach work targeting persons subjected to contemporary forms of slavery, considering that victims may be unable to seek assistance, may not trust the authorities or may fear the consequences of making a complaint;**

(h) **Undertake public awareness-raising campaigns to challenge stigma and prejudices within society towards groups vulnerable to contemporary forms of slavery, and sensitize populations to the rights of such people.**

62. **In terms of practical barriers, the Special Rapporteur recommends that States:**

(a) **Allocate sufficient resources to ensure that laws can be fully implemented at the national level, including in isolated areas, and ensure that the reach of the justice system is expanded to remote and rural areas where contemporary forms of slavery are prevalent;**

(b) **Adopt measures to ensure that legal, administrative and procedural fees related to access to justice are waived for victims of contemporary forms of slavery who cannot afford them; in addition, provide financial assistance to victims that cover costs related to the proceedings, such as transportation and accommodation and other costs associated with gaining access to justice.**

63. **Regarding legislative and policy barriers, the Special Rapporteur recommends that States:**

(a) **Ratify all the Conventions in the international legal framework prohibiting contemporary forms of slavery and ensuring that persons subjected to these practices have equal access to justice and effective remedies, including the Protocol of 2014 to the ILO Forced Labour Convention, 1930 (No. 29). States should align their national legislation with these international standards, in order to adequately protect victims of contemporary forms of slavery;**

(b) **Ensure that contemporary forms of slavery are criminalized as specific crimes within national legal frameworks with adequate penalties commensurate with the crimes; all forms of contemporary forms of slavery should be criminalized as stand-alone crimes and treated separately from related phenomena such as trafficking in persons;**

(c) **Ensure that legislation adopted criminalizing contemporary forms of slavery is sufficiently clear and detailed in order for law enforcement officials to detect situations in which persons are subjected to these practices and to enforce the law;**

(d) **In addition, legislation should make it possible for victims to seek civil remedies where criminal justice fails to secure redress;**

(e) **Review or abolish legislation and policies that directly or indirectly limit access to justice to persons subjected to contemporary forms of slavery, and ensure that victims have adequate access to justice irrespective of their immigration status;**

(f) **Ensure that all labour occupations are adequately regulated and included in legal definitions of work in order to provide adequate legal protection to victims of contemporary forms of slavery.**

64. **In terms of institutional and procedural barriers, the Special Rapporteur recommends that States:**

(a) **Ensure all authorities involved in the fulfilment of the rights of victims of contemporary forms of slavery are adequately trained in the identification of victims**

including border management authorities, the police, public prosecutors, labour inspectorate and the judiciary;

(b) Provide labour inspectors with a mandate and the tools necessary to enable them to identify victims of contemporary forms of slavery proactively, and eliminate challenges to effective labour inspections, such as measures that compel labour inspectors to conduct immigration enforcement activity;

(c) Consider systemic collection of data as a means by which victims of contemporary forms of slavery are being identified in order to improve identification efforts;

(d) Ensure the adequacy of structures and institutions to address violations and availability of effective, fair and protective mechanisms and complaints procedures; allocate financial and human resources to ensure the effective functioning of the judicial system;

(e) Provide training to law enforcement authorities on legislation prohibiting contemporary forms of slavery to ensure that they respond to the cases brought to their attention efficiently and effectively; ensure that institutional training is reinforced with performance targets;

(f) Train police, prosecutors and judicial authorities in the handling of victims of contemporary forms of slavery, especially on how to create a safe, supportive, and child-sensitive and gender-sensitive environment for victims to ensure they can access justice;

(g) Take adequate corrective measures to ensure that officials who have failed to implement the law properly or have obstructed its implementation are disciplined;

(h) Take all steps necessary to eliminate all forms of corruption in the justice system that could impede the fulfilment of the right to access to justice and remedy;

(i) Take the measures necessary to ensure the protection of victims as well as family members and witnesses, including protection from intimidation and retaliation for exercising their rights under legislation criminalizing contemporary forms of slavery or for cooperating with legal authorities;

(j) Provide protection measures to victims of contemporary forms of slavery that are not conditional on the victim's willingness to cooperate in criminal and other proceedings;

(k) Ensure that persons subjected to contemporary forms of slavery are informed, in a language they understand, of their rights, relevant laws and regulations, available complaint mechanisms and legal remedies; officials who have direct contact with victims of contemporary forms of slavery should be trained to provide this information to them;

(l) Ensure that victims of contemporary forms of slavery have access to competent legal advice and assistance and that the necessary resources are allocated to provide high-quality legal aid;

(m) Ensure that all victims of contemporary forms of slavery, both nationals and non-nationals, can pursue appropriate administrative, civil and criminal remedies, irrespective of their legal status;

(n) Take the measures necessary to ensure that non-nationals victims contemporary forms of slavery are able to remain in a country to pursue legal remedies;

(o) Take measures to protect victims of contemporary forms of slavery, including, in particular for migrant workers, the provision of a reflection and recovery period in order to allow the victim to take an informed decision relating to protective measures and participation in legal proceedings;

(p) **Ensure that victims of contemporary forms of slavery are not detained, prosecuted or punished for crimes they have committed as a result of being subjected to such practices; develop guidance for police officers, prosecutors and judges on the implementation of the "non-punishment provision";**

(q) **Ensure that information about the number of successful convictions and sentences passed are published on a regular basis;**

(r) **A compensation fund should be available for victims of contemporary forms of slavery to ensure they are able to successfully seek compensation against perpetrators in the absence of a criminal prosecution.**

65. **Regarding barriers in the context of global supply chains, the Special Rapporteur recommends that States:**

(a) **Take all actions necessary to ensure the full and effective implementation of the Guiding Principles on Business and Human Rights, including the third pillar on remedy;**

(b) **Consider elaborating an international legally binding instrument to regulate, under international human rights law, the activities of transnational corporations and other business enterprises;**

(c) **Provide oversight of all non-State grievance mechanisms, ensuring that they respect due process standards and uphold the rights of victims to have access to justice and remedy as established in international law.**

C. Recommendations to other stakeholders

66. **United Nations agencies should support Member States, civil society organizations and other stakeholders to ensure the right to have access to justice, including through the development of relevant programmes by country teams and technical support to countries in developing robust legislation and policies.**

67. **Business stakeholders should take all steps necessary to ensure full compliance with the Guiding Principles, including the third pillar on remedy.**

68. **Business stakeholders should refrain from the use of private grievance mechanisms that violate the rights of victims of contemporary slavery to justice and remedy.**